

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

CYNDEE SMITH,)	
)	
Plaintiff)	
)	
v.)	No. 3:04cv0498 AS
)	
CASTAWAYS FAMILY DINER, and)	
CARROL ANN GONZALEZ,)	
)	
Defendants)	

MEMORANDUM AND ORDER

This court takes full judicial notice of the official record in this case and has given close attention to the Report and Recommendation of United States Magistrate Judge Christopher A. Nuechterlein filed on or about June 26, 2005. The magistrate judge has recommended that in this case the defendants' motion for partial summary judgment under Rule 56 of the Federal Rules of Civil Procedure be granted and that this case be remanded to the Starke Circuit Court in Knox, Indiana for the proper disposition of state claims. The plaintiff has filed an extensive objection to the Report and Recommendation of the magistrate judge on June 27, 2005. It appears that the magistrate judge has carefully waded into the basic factual predicate for the exercise of federal question jurisdiction in this case. The question has to do with the number of employees in the particular enterprise of the defendants under 42 U.S.C. §2000e(b), which is a part of the Title VII Civil Rights Act of 1964, as reinstated in the Civil Rights Act of 1991. The Supreme Court of the United States has dealt with this concern in *Walters v. Metro Educ. Enters. Inc.*, 519 U.S. 202 (1997).

Without taking the trouble to write a law journal article, it is the conclusion here that the Report and Recommendation of the magistrate judge is supported by the record and correct. Therefore, the Report and Recommendation is now **APPROVED**, and this case is now **REMANDED** to the Starke Circuit Court in Knox, Indiana for the determination of such state law issues that may still be a part of this case. Each party will bear its own costs. The Clerk shall comply with this order forthwith. **IT IS SO ORDERED.**

DATED: July 25, 2005

S/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT

cc: The Honorable Christopher A. Nuechterlein